



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 13, 1998

Ms. Tracy B. Calabrese
Assistant City Attorney
City of Houston
Legal Department
P.O. Box 1562
Houston, Texas 77251-1562

OR98-0711

Dear Ms. Calabrese:

You ask this office to reconsider our ruling in Open Records Letter No. 98-0051 (1998). Your request for reconsideration was assigned ID# 113978.

The City of Houston (the "city") received a request for several categories of documents concerning a named individual's grievance hearings. In Open Records Letter No. 98-0051 (1998), this office concluded that the city could not withhold the requested information under section 552.103 of the Government Code. In your request for reconsideration, you contend that our ruling is contrary to past rulings regarding grievance hearings before a city civil service commission hearing examiner. In Open Records Letter Nos. 97-0873 (1997) and 96-0355 (1996), this office concluded that hearings of this nature constituted reasonably anticipated or pending litigation for purposes of section 552.103. In Open Records Letter No. 97-1077 (1997) and subsequent rulings to the city, however, we concluded that a civil service hearing of this nature is not litigation for purposes of section 552.103. *See also* Open Records Letter No. 97-1418 (1997).

This office has concluded that "litigation" within section 552.103 includes contested cases conducted in a quasi-judicial forum. *See, e.g.,* Open Records Decision Nos. 474 (1987), 368 (1983), 336 (1982), 301 (1982). In Open Records Decision No. 588 (1991), this office concluded that section 552.103

was designed to protect the interests of the state in adversary proceedings or in negotiations leading to the settlement thereof, and we have no doubt that 'litigation' encompasses proceedings conducted in quasi-judicial forums as well as strictly judicial ones. 'Litigation' has been defined by the dictionary

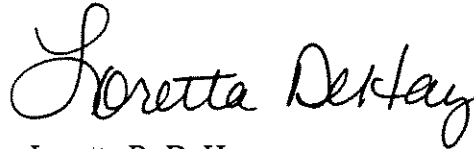
to include 'a controversy involving adverse parties before an executive governmental agency having quasi-judicial powers and employing quasi-judicial procedures.' Webster's Third International Dictionary at 1322. *See San Antonio Public Service Co. v. Long*, 72 S.W.2d 696 (Tex. Civ. App.--San Antonio 1934, no writ). *See also* V.T.C.S. art. 6252-13a, § 14 (procedures for contested cases under the Administrative Procedure and Texas Register Act).

As you have not explained, and it is not clear from the information submitted for our review, that the hearings examiner employs "quasi-judicial procedures," we do not believe that grievance hearings before a city civil service commission hearing examiner constitute "quasi-judicial" litigation for purposes of section 552.103.

Open Records Letter No. 97-1077 (1997), therefore, implicitly overruled our previous rulings regarding this issue. As we are of the opinion that this type of hearing is not anticipated or pending litigation under section 552.103, we decline to overrule our decision in Open Records Letter No. 98-0051 (1998).

If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Deputy Chief
Open Records Division

LRD/rho

Ref.: ID# 113978

Enclosures: Submitted documents

cc: Ms. Dianne Gutierrez
Staff Representative
American Federation of State, County, and Municipal Employees
P.O. Box 230242
Houston, Texas 77223-0242
(w/o enclosures)